STATE OF MICHIGAN

IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN		
PLAINTIFF-APPELLANT,		Michigan Supreme Court No: 153185
-VS-		
		Court of Appeals No: 315323
WILLIAM LYLES, JR.		
DEFENDANT-APPELLEE.		
	/	
WAYNE COUNTY CIRCUIT COURT NO: 12-08021		
WATTLE COUNTY CIRCUIT COURT IVO. 12-00021	/	
KYM L. WORTHY		
WAYNE COUNTY PROSECUTING ATTORNEY		
ATTORNEY FOR PLAINTIFF-APPELLANT		
ATTORNET FOR FLAINTIFT-ATTELLANT		
DANIEL J. RUST (P32856)		
ATTORNEY FOR DEFENDANT-APPELLEE		

APPELLEE'S ANSWER TO APPELLANT'S APPLICATION

DANIEL J. RUST P.O. BOX 40089 REDFORD, MICHIGAN 48240 (313) 837-7734

TABLE OF CONTENTS

	PAGE
INDEX OF AUTHORITIES	iii
STATEMENT OF JURISDICTION AND RELIEF SOUGHT	1
STATEMENT OF QUESTIONS PRESENTED	2
STATEMENT OF FACTS	3
ARGUMENT:	
I. THE COURT OF APPEALS CORRECTLY FOLLOWED THE ORDER OF THIS COURT. THE COURT OF APPEALS 'S DECISION THAT THE JURY WAS NOT PROPERLY INSTRUCTED WITH REGARDS TO CHARACTER EVIDENCE WAS NOT CLEARLY ERRONEOUS	4-7

INDEX OF AUTHORITIES

Cases	PAGE
People v Kurylczyk, 443 Mich 289 (1993)	5
People v Lukity, 460 Mich 484 (1999)	5
People v Riddle, 467 Mich 116 (2002)	7
People v Wolfe, 440 Mich 508 (1992), amended 441 Mich 1201 (1992)	6
Statutes	
MCL 769.26	5
MCR 7.302(B)(5)	5
Rules	
MCR 7.302(B)(5)	5
Michigan Jury Instructions	
M Crim JI 4.4.	7
Other Authorities	
Webster's New International Dictionary, Second Ed., unabridged, 1946, p 886	6

STATEMENT OF JURISDICTION

AND RELIEF SOUGHT

Defendant accepts Plaintiff's Statement of Jurisdiction.

The Application should be denied and the Court of Appeals decision affirmed.

STATEMENT OF QUESTIONS PRESENTED

I. DID THE COURT OF APPEALS CORRECTLY FOLLOW THE ORDER OF THIS COURT, AND WAS THEIR DECISION THAT THE JURY WAS NOT PROPERLY INSTRUCTED WITH REGARDS TO CHARACTER EVIDENCE WAS CORRECT?

Court of Appeals Did Not Answer

People Answer: No

Defendant Answers: Yes

STATEMENT OF FACTS

Defendant concurs with Plaintiff's Statement of Facts, except as otherwise noted.

ARGUMENT

I. THE COURT OF APPEALS CORRECTLY FOLLOWED THE ORDER OF THIS COURT. THE COURT OF APPEALS DECISION THAT THE JURY WAS NOT PROPERLY INSTRUCTED WITH REGARDS TO CHARACTER EVIDENCE WAS NOT CLEARLY ERRONEOUS.

Standard of Review

A decision of the Court of Appeals is reviewed for clear error. MCR 7.302(B)(5). Clear error exists when the reviewing court is left with a definite and firm conviction that a mistake has been made. *People v Kurylczyk*, 443 Mich 289 (1993).

Argument

Following a unanimous decision by the Court of Appeals ordering a new trial¹, this Court ordered the Court of Appeals to reconsider whether the trial court's failure to give a defense requested jury instruction was error under the standard espoused in *People v Lukity*, 460 Mich 484 (1999)².

That case required a reviewing court to determine if it affirmatively appears that the error asserted 'undermine[s] the reliability of the verdict.' Such error does not require reversal unless, in the context of the untainted evidence, 'it is more probable than not that a different outcome would have resulted without the error.' *Id.* See also MCL 769.26³.

¹ COA #315323, unpubl, rel. 07/22/14.

² MSC #, 150040, Order, rel, 10/30/15.

MCL 769.26: No judgment or verdict shall be set aside or reversed or a new trial be granted by any court of this state in any criminal case, on the ground of misdirection of the jury,

The burden is on the defendant to demonstrate the error resulted in a miscarriage of justice, i.e., was prejudicial and the error influenced the verdict. *Lukity*, at 503.

Applying this standard, the Court of Appeals again unanimously found the failure to give the defense requested instruction regarding character evidence was not harmless considering the evidence relied on by the prosecution, that the failure 'eviscerated⁴ the effect of defendant's proffered character evidence'.

While the prosecutor continues to make the same argument as it has previously made in its initial application, the question to be determined is whether the Court of Appeals correctly applied the standard as directed.

The reviewing court considered the entire record. It found the evidence proffered by the prosecution far from overwhelming.

It reviewed the evidence of a 30-year-old crime. There was no physical evidence linking defendant to the offense. Any physical evidence that had been obtained had long since disappeared, been lost or destroyed. Witnesses had died, including a crucial witness relative to the prosecutor's allegations of defendant committing domestic violence. Any evidence submitted was based upon memories from witnesses who were teenagers at the time and exclusively relied upon their 30-year-old memories.⁵

As noted by the Court of Appeals, defendant was never positively identified as being in the house that night. Instead the two witnesses testified they both saw a shadow and smelled stale cigarettes which they merely associated with defendant. The lower court continued to

or the improper admission or rejection of evidence, or for error as to any matter of pleading or procedure, unless in the opinion of the court, after an examination of the entire cause, it shall affirmatively appear that the error complained of has resulted in a miscarriage of justice.

Gutted the defense. To deprive of force, as an argument. *Webster's New International Dictionary*, Second Edition, unabridged, 1946, p 886.

⁵ COA # 315323, unpubl, rel 12/22/15, Slip op 4.

assess other evidence presented by the prosecution. While the prosecutor alleged defendant had fled the scene, as the court noted, it is well settled that evidence of flight, without more is insufficient to sustain a conviction. See M Crim JI 4.4.

The court also considered motive, noting evidence of motive in this case was also 'hardly compelling given that it was unclear from the evidence why defendant would have blamed Weathers (the victim) of all people for the demise of his relationship.' As the court correctly indicated, while motive is relevant, it is not an element of the crime of first degree murder and on its own, is insufficient to establish a conviction for the crime.⁶

As lower court also noted, the majority of the prosecutor's case was to point out defendant's alleged violent history and tumultuous relationship with a now deceased witness, yet failed to present any supporting documentation, such as police reports or medical records to substantiate the alleged abuse. Again, the prosecutor merely relied upon old memories.

In order to rebut this, defendant presented evidence of his character. Yet this defense was gutted by the failure of the trial court to properly instruct the jury, even though the instruction had been requested and supported by the evidence presented.

Regardless of the 'meagerness' of the evidence, it was nonetheless presented to the jury. It was their role to determine what weight to give it. *People v Wolfe*, 440 Mich 508 (1992), amended 441 Mich 1201 (1992). Regardless of whether it was emphasized in closing arguments, the jury should have been properly instructed. They were not. The proseutor merely relies upon stale memories from a witness who wanted someone held responsible, some one she held responsible for breking up her family.

The failure to give the requested instruction was not harmless. The failure of the trial court to properly instruct the jury as to character evidence influenced the verdict because

⁶ COA # 315323, unpubl, rel 12/22/15, Slip op 5.

instructions did not clearly present defendant's case and applicable law to them for their consideration, nor did they adequately protect his right to present a defense. *People v Riddle*, 467 Mich 116, 124; 649 NW2d 30 (2002).

The Court of Appeals correctly applied the standard of review as directed by this Court.

It reviewed the untainted evidence, recognized defendant's burden, found the error influenced the verdict, and found, considering the entire cause, including the other jury instructions, the error deprived defendant of his proffered argument and in light of the evidence offered by the prosecution, was not harmless.

Since the Court of Appeals did not clearly err in this decision, the Application should be denied.

SUMMARY AND RELIEF SOUGHT

For the foregoing reasons, Defendant-Appellant respectfully requests this Honorable Court deny the Application.

The decision of the Court of Appeals should be affirmed.

Respectfully submitted,

/s/ Daniel J. Rust_

DANIEL J. RUST P.O. Box 40089 Redford, Michigan 48240 (313) 837-7734

DATED: March 7, 2016